

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS**

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED

OCT - 5 2017

MOTION UNDER 28 U.S.C. SECTION 2255, CLERK, U.S. DISTRICT COURT
TO VACATE, SET ASIDE, OR CORRECT SENTENCE BY A Deputy
PERSON IN FEDERAL CUSTODY

UNITED STATES OF AMERICA
Respondent,

FEDERAL TRANSFER CENTER, OKLAHOMA CITY, OK.
73169
PLACE OF CONFINEMENT

vs.

54050-177

PRISONER ID NUMBER

4-16CR-083-0

OSCAR PEREZ

MOVANT (full name of movant)

CRIMINAL CASE NUMBER

(If a movant has a sentence to be served in the future under a federal judgment which he wishes to attack, he should file a motion in the federal court which entered the judgment.)

INSTRUCTIONS - READ CAREFULLY

1. This motion must be legibly handwritten or typewritten, and signed by the movant under penalty of perjury. Any false statement of a material fact may serve as the basis for prosecution and conviction for perjury. All questions must be answered concisely in the proper space on the form.
2. Additional pages are not permitted except with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities needs to be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
3. Upon receipt, your motion will be filed if it is in proper order. No fee is required with this motion.

4. If you do not have the necessary funds for transcripts, counsel, appeal, and other costs connected with a motion of this type, you may request permission to proceed *in forma pauperis*, in which event you must execute the declaration provided with this motion, setting forth information establishing your inability to prepay the fees and costs or give security therefor. If you wish to proceed *in forma pauperis*, you must have an authorized officer at the penal institution complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.
5. Only judgments entered by one court may be challenged in a single motion. If you seek to challenge judgments entered by different judges or divisions either in the same district or in different districts, you must file separate motions as to each such judgment.
6. Your attention is directed to the fact that you must include all grounds for relief and all facts supporting such grounds for relief in the motion you file seeking relief from any judgment of conviction.
7. When the motion is fully completed, the original and two copies must be mailed to the Clerk of the United States District Court for the Northern District of Texas at the appropriate divisional office whose address is:

Abilene Division
P.O. Box 1218
Abilene, TX 79604

Amarillo Division
205 S.E. 5th St, Rm 133
Amarillo, TX 79101

Dallas Division
1100 Commerce, Rm 1452
Dallas, TX 75242

Fort Worth Division
501 W. 10th St, Rm 310
Fort Worth, TX 76102

Lubbock Division
1205 Texas Ave., Rm 209
Lubbock, TX 79401

San Angelo Division
33 East Twohig St, Rm 202
San Angelo, TX 76903

Wichita Falls Division
P.O. Box 1234
Wichita Falls, TX 76307

8. Motions which do not conform to these instructions will be returned with a notation as to the deficiency.

MOTION

1. Name and location of court that entered the judgment of conviction you are challenging:

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT TEXAS
501 W 10th St #310,
Fort Worth, TX 76102

2. Date of the judgment of conviction:

10/4/16

3. Length of sentence: TWO HUNDRED (200) MONTHS IMPRISONMENT.

4. Nature of offense involved (all counts):

CONSPIRACY TO POSSESS WITH INTENT TO DISTRIBUTE METHAMPHETAMINE
(Violation of 21 U.S.C. § 846)

5. (a) What was your plea? (Check one)

Not guilty ☐ Guilty ☒ Nolo contendere (no contest) ☐

(b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to?

N/A

6. If you went to trial, what kind of trial did you have? (Check one) Jury ☐ Judge Only ☐ N/A

7. Did you testify at the trial? (Check one) Yes ☐ No ☐

8. Did you appeal from the judgment of conviction? (Check one) Yes ☐ No ☐

9. If you did appeal, answer the following:

Name of Court: N/A

Result: N/A

Date of result: N/A

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any federal court?

Yes ☐ No ☒

11. If your answer to 10 was "Yes" give the following information:

Name of Court: N/A

Nature of proceeding:

N/A

Grounds raised:

N/A

Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☐ N/A

Result: N/A

Date of result: N/A

As to any *second* petition, application or motion, give the same information:

Name of Court: N/A

Nature of proceeding:

N/A

Grounds raised:

N/A

Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☐ N/A

Result: N/A PETITIONER HAS EXHAUSTED ADMINISTRATIVE REMEDY, BP8, 9, 10 & 11

Date of result: N/A

As to any *third* petition, application or motion, give the same information:

Name of Court: N/A

Nature of proceeding:

N/A

Grounds raised:

N/A

Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☒

Result: N/A

Date of result: N/A

Did you appeal to an appellate federal court having jurisdiction, the result of action taken on any petition, application or motion?

First petition, etc. Yes ☐ No ☐

Second petition, etc. Yes ☐ No ☐

Third petition, etc. Yes ☐ No ☐

N/A

If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

NO PREVIOUS PETITIONS HAVE BEEN FILED.

12. State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

CAUTION: If you fail to set forth all grounds in this motion, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in these proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed. However, you should raise in this petition all available grounds (relating to this conviction) on which you based your allegations that you are being held in custody unlawfully.

DO NOT CHECK ANY OF THESE LISTED GROUNDS. If you select one or more of these grounds for relief, you must allege facts. The motion will be returned to you if you merely check (a) through (j) or any of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily or with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right to appeal.

A. Ground One:

MOVANT'S WAIVER OF THE RIGHT TO FILE AN APPEAL OR COLLATERAL ATTACK UNDER 28 USC SECTION 2255
WAS ENTERED WITHOUT THE FULL KNOWLEDGE AND REALIZATION OF THE RIGHTS HE WAS RELINQUISHING.

Supporting FACTS (tell your story briefly without citing cases or law):

Movant Perez, submits that he as a layperson standing before the court while entering of the plea of guilty, was totally reliant on the advice of counsel. In this regard, It is unfair to presume that from whatever explanation counsel might offer beyond reading the waiver provision, a reasonably educated layperson will digest how little recourse exists to bring a post-conviction challenge. He entered the plea of guilty without full understanding of the rights he was relinquishing. He submits that he cannot be perceived. Whereas, most defendants have heard of an appeal, and have a general understanding, a layperson, had no idea of the meaning "Collateral Attack".

B. Ground Two:

MOVANT WAS DENIED THE EFFECTIVE ASSISTANCE OF COUNSEL DURING THE MOST CRUCIAL STAGE OF THE PROCEEDINGS, COUNSEL WAS CONSTITUTIONALLY DEFICIENT IN HIS REPRESENTATION OF THE MOVANT,

Supporting FACTS (tell your story briefly without citing cases or law):

Movant submits that Counsel failed to act as an advocate on his behalf. Counsel failed to do due diligence in investigating the facts of the case and the Movant's involvement and scope of the agreement in the Conspiracy during the brief time he was involved. The possibility of mitigating his role in the offense, the amount of drugs he was held accountable for or any defense factors, which may have been presented to the court. Counsel failed to mitigate, failed to investigate, identify and present the characteristics of the defendant, identify any that may have been mitigating and sanctioned for departure such as the Movant's history of abuse as a child. Counsel failed to file an appeal as he advised the Movant that he would do. The time frame for giving notice of appeal had expired by the time the Movant realized that No such appeal had been filed.

C. Ground Three:

Supporting FACTS (tell your story briefly without citing cases or law):

D. Ground Four:

Supporting FACTS (tell your story briefly without citing cases or law):

13. If any of the grounds listed in 12A, B, C, and D were not previously presented, state briefly what grounds were not so presented, and give your reasons for not presenting them:

GROUND WERE NOT PRESENTED DUE TO THE INEFFECTIVE REPRESENTATION OF COUNSEL.

14. Do you have any petition or appeal now pending in any court as to the judgment under attack?

Yes ☐ No ☒

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing:

James H Shaw PC &
James David Renforth , II
912 W Belknap St
Fort Worth, TX 76102

(b) At arraignment and plea:

Jim Renforth for Jim Shaw.

James H Shaw PC
912 W Belknap St
Fort Worth, TX 76102

(c) At trial:

N/A

(d) At sentencing:

Jim Renforth for Jim Shaw.

James H Shaw PC
912 W Belknap St
Fort Worth, TX 76102

(e) On appeal

N/A No Appeal was filed.

(f) In any post-conviction proceeding:

N/A None filed previously. Movant proceeds herein pro se.

(g) On appeal from any adverse ruling in a post-conviction proceeding:

N/A None filed previously. Movant proceeds herein pro se.

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at approximately the same time?

Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future:

N/A

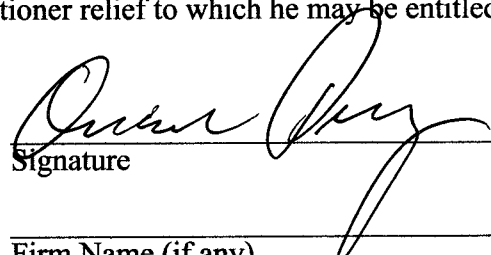
(b) And give date and length of sentence to be served in the future:

N/A

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ☐ No ☐ N/A

Wherefore, movant prays that the Court grant petitioner relief to which he may be entitled in this proceeding.


Signature

Firm Name (if any)

N/A

Address

N/A

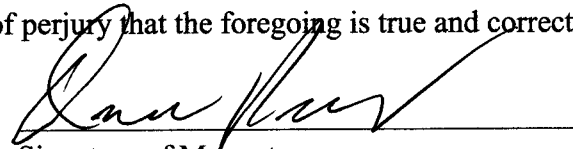
City, State & Zip Code

N/A

Telephone (including area code)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.

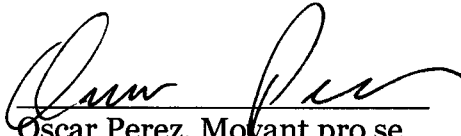
Executed on September 30, 2017 (date).


Signature of Movant

VERIFICATION

Pursuant to 28 U.S.C. §§ 1746 and Federal Rules Governing Title 18 U.S.C. Section 2255, Movant , Oscar Perez, declares, under penalty of perjury, that:

1. I have read the foregoing Petition for Writ of Habeas Corpus, in which I am the Movant .
2. I know that the factual allegations contained in the motion are true.
3. with respect to facts alleged in the motion upon information and belief, I believe these factual allegations to be true.
4. I declare under penalty of perjury that this verification is correct.


Oscar Perez, Movant pro se
Fed. Reg. No: 54050-177

Dated this 30th day of September, 2017.
At: FTC OKLAHOMA CITY
FEDERAL TRANSFER CENTER
P.O. BOX 898801
OKLAHOMA CITY, OK 73189

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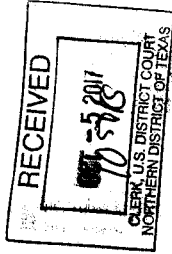
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